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REMARKS

This is a full and timely response to the Official Action mailed December 13, 2005. Reconsideration of the present application in light of the following remarks, and the amendments to the claims set forth above, is respectfully requested. This amendment is being filed together with a three-month extension of time.

Status of the Claims

Claims 1, 7, 12 and 22 have been amended herein and claims 4, 14 and 24 have been canceled. Thus claims 1-3, 5-13, 15-23 and 25-34 are pending for the Examiner's consideration.

Claims 1-7, 12-18, 22-27 were rejected under 35 USC 102 (a and e) as being anticipated by Huang (US20040043189).

Claims 1-6, 12-17, 22-26 were rejected under 35 USC 102(b) as being anticipated by Curro et al. (US6452063).

Claims 7-11, 18-21 and 27-31 were rejected under 35 USC 103(a) as being unpatentable over Huang or Curro et al..

Claims 1-7, 12-18, 22-27 were rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over the claims of USD501553.

Rejections under 35 U.S.C. 102 and 103

Claims 1-7, 12-18, 22-27 were rejected under 35 USC 102 (a and e) as being anticipated by Huang (US20040043189). Claims 1-6, 12-17, 22-26 were rejected under 35 USC 102(b) as being anticipated by Curro et al. (US6452063). Claims 7-11, 18-21

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and 27-31 were rejected under 35 USC 103(a) as being unpatentable over Huang or Curro et al.. The Examiner's rejections are respectfully traversed.

Claim 1 has been amended herein to read as follows:

1. (Currently Amended) A three dimensional apertured film comprising:
a first planar surface in a first imaginary plane;
a second planar surface in a second imaginary plane located below said first imaginary plane;
a first plurality of apertures;
at least one member spanning each one of said first plurality of apertures to thereby define a plurality of smaller apertures, each of said plurality of smaller apertures in communication with a respective one of said first plurality of apertures, *wherein said member spanning each one of said apertures has a top surface located in a third imaginary plane, said third imaginary plane being located below said first imaginary plane and said second imaginary plane.*
(Emphasis Added).

Thus claim 1 specifies that the apertured film according to the present invention includes, in part, a member spanning each of the apertures having a top surface located in a third plane wherein the third plane is located *below* both the first planar surface of the film and the second planar surface of film. It is respectfully submitted that cited references fail to teach or suggest any structure of this type.

Huang purports to disclose a plastically deformable sheet 4 having opposite top and bottom surfaces 41 and 42 formed with a plurality of spaced recesses 44 and a plurality of spaced apart capillaries 40. (¶ 0021). Huang states that each capillary extends downwardly from a bight surface 432 of a recess confining wall. (¶ 0021). However, Huang fails to teach or suggest *any member spanning each of the apertures having a top surface located in an third plane wherein the third plane is located below*

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both the first planar surface of the film and the second planar surface of film in the manner of the claimed invention.

Curro purports to disclose an apertured elastomeric web that includes a plurality of apertures and a plurality of interconnected members. However, Curro also fails to teach or suggest *any member spanning each of the apertures having a top surface located in a third plane wherein the third plane is located below both the first planar surface of the film and the second planar surface of film* in the manner of the claimed invention.

In view of the above it is respectfully submitted that Huang and Curro fail to teach or suggest the claimed invention. It is further submitted that the teachings of these references cannot be combined in any manner to render the claimed invention obvious.

Obviousness-Type Double Patenting Rejection

Claims 1-7, 12-18, 22-27 were rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over the claim of USD501553. It is respectfully submitted that the Examiner's rejection based upon this doctrine is improper. The doctrine of obviousness-type double patenting is "grounded in public policy so as to prevent the *unjustified* or *improper* timewise extension of the right to exclude granted by a patent." (See, *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993) and MPEP 804). Thus, the doctrine essentially recognizes that it would be against public policy for an applicant to *unjustifiably or improperly extend* a patent term merely by filing multiple applications. However, in the present application, the Applicant is not seeking to unjustifiably or improperly *extend* a patent term, rather the Applicant is merely seeking to obtain a standard twenty year term as afforded by law. There is no improper or unjustified extension in the present case whatsoever. Accordingly, it is respectfully submitted that the Examiner's rejection is improper and should be withdrawn.

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It is submitted that invention set forth in the amended claims is allowable for at least the reasons set forth above. Accordingly, for the reasons set forth above, entry of the amendments and allowance of the claims is respectfully requested.

The Examiner is invited to call the applicants' undersigned representative if any further action will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, the applicants respectfully request the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

By: /Paul J. Higgins/
Paul Higgins
Reg. No. 44,152

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-1728
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